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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PAOLO GRIECO, Plaintiff, -against- FORLINI'S RESTAURANT, INC., JOSEPH FORLINI, DEREK FORLINI, and JOHN DOES # 1-10, Defendants.	ECF 17 Civ. ______ **COMPLAINT AND JURY DEMAND**

Plaintiff PAOLO GRIECO ("Plaintiff"), complains and alleges for his complaint against FORLINI'S RESTAURANT, INC., JOSEPH FORLINI, DEREK FORLINI and JOHN DOES # 1-10 (together "Defendants" or "Defendant") as follows:

NATURE OF THE ACTION

1. Plaintiff alleges that he is: (a) entitled to unpaid wages from Defendants for work for which he did not receive minimum wage and/or overtime premium pay, as required by law, and (b) entitled to liquidated damages pursuant to the FLSA, 29 U.S.C. §§ 201 *et seq*.

2. Plaintiff further complains that he is entitled to back wages from Defendants for minimum wages, overtime wages, and/or spread of hours premium pay, as required by the New York Labor Law §§ 650 *et seq*. and the supporting New York State Department of Labor regulations.

3. Plaintiff further complains that he is entitled to $50 per day as a result of Defendants' failure to provide the notice required under the New York Wage Theft Prevention

Act and $250 per week for Defendants' failure to provide a Wage and Hour Statement to Plaintiff disclosing, inter alia, correct overtime hours worked and rates of pay.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1337, and 1343, and supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367. In addition, the Court has jurisdiction over Plaintiff's claims under the FLSA pursuant to 29 U.S.C. § 216(b).

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

6. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

THE PARTIES

7. Plaintiff Paolo Grieco is an adult individual, residing in Kings County, New York.

8. Upon information and belief, Defendant FORLINI'S RESTAURANT, INC. (the "Corporate Defendant") is a New York corporation, whose principal place of business is located at 93 Baxter Street, New York, N.Y. 10013.

9. Upon information and belief, Defendants JOSEPH FORLINI and DEREK FORLINI is each an officer, director and/or managing agent of the Corporate Defendant, whose address is unknown at this time and who participated in the day-to-day operations of the Corporate Defendant and acted intentionally and maliciously and is an "employer" pursuant to the FLSA, 29 U.S.C. §203(d) and regulations promulgated thereunder, 29 C.F.R. §791.2, as well as the New York Labor Law Sec. 2 and the regulations thereunder and is jointly and severally liable with the Corporate Defendant.

10. Upon information and belief, Defendants JOSEPH FORLINI and DEREK FORLINI (the “Individual Defendants”) are each one of the owners, officers, directors and/or managing agents of the Corporate Defendant, who participated in the day-to-day operations of the Corporate Defendant and acted intentionally and maliciously and are “employers” pursuant to the FLSA, 29 U.S.C. § 203(d) and regulations promulgated thereunder, 29 C.F.R. §791.2, as well as the New York Labor Law and are jointly and severally liable with the Corporate Defendant.

11. Upon information and belief, the Individual Defendants are each the President and Chief Executive Officer and/or Executive Director of the Corporate Defendant, and have each held these positions during the period from January 1, 2011 to the present (the “Forlini time period”).

12. Upon information and belief, during the Forlini time period, the Individual Defendants each had authority over the Corporate Defendant’s management, supervision, and oversight of the Corporate Defendant’s affairs in general and exercised operational control over the Corporate Defendants’ employees and other employees and their decisions directly affected the nature and condition of the employees’ employment by the Corporate Defendant.

13. Upon information and belief, during the Forlini time period, the Individual Defendants (1) had the power to hire and fire employees of the Corporate Defendant, (2) supervised and controlled the employees’ schedules and conditions of employment, (3) determined the rate and method of payment of the employees, and (4) maintained employment records related to the employees.

14. Upon information and belief, John Does #1-10 represent the officers, directors and/or managing agents of the Corporate Defendant, whose identities are unknown at this time

and who participated in the day-to-day operations of the Corporate Defendant and acted intentionally and maliciously and are "employers" pursuant to the FLSA, 29 U.S.C. §203(d) and regulations promulgated thereunder, 29 C.F.R. §791.2, as well as the New York Labor Law Sec. 2 and the regulations thereunder and are jointly and severally liable with the Corporate Defendant.

STATEMENT OF FACTS

15. Plaintiff PAOLO GRIECO ("Paolo") was employed by Forlini's Restaurant Inc. and Joseph Forlini and Derek Forlini (together "Defendant") as a full time waiter from about November 24, 2015 to September 30, 2016 (the "time period").

16. Defendant operated an Italian restaurant at 93 Baxter Street, New York, N.Y. 10013 (the "Restaurant").

17. During the time period, Defendant employed at any given time at least 5 other waiters.

18. During the time period, Paolo was not paid all his regular, minimum and overtime wages for his hours worked because (a) he was not paid for all his time working, and (c) was not paid time and one half his regular wage rate for his time working more than 40 hours per week.

19. During the time period, in certain weeks, Paolo worked more than 40 hours per week ("overtime') and generally was not paid time and one half his regular wage rate for his hours worked over forty in a workweek.

20. During the time period, Paolo did not sign in and out of his job.

21. During the time period, Paolo exclusively worked for Defendant.

22. During the time period, Joseph Forlini and Derek Forlini were the operations managers and owners of Defendant.

23. Joseph and Derek Forlini hired Paolo as a waiter for Defendant and agreed to pay Paolo minimum wages for all his hours worked.

24. During the time period, Paolo worked at least 50 hours per week, but was paid for only 24 hours.

25. From November 20, 2015 to about July 1, 2016, Paolo generally worked Tuesday through Sunday from 10:30 a.m. to 11:30 p.m., which equaled 78 hours per week.

26. From about July 1, 2016 to September 30, 2016, Paolo generally worked Tuesday, Wednesday, Saturday, and Sunday from 10:30 am to 11:30 pm, which equaled 52 hours per week.

27. During the time period, Paolo also worked additional hours buying food in China Town and delivering it to Defendants.

28. Paolo was not given any breaks.

29. Paolo generally did not take a break for meals and ate while working.

30. Although Paolo took some cigarette breaks, Paolo was always on call during these breaks and often these breaks were interrupted because Paolo was required to return to work during the break.

31. Paolo repeatedly complained to Joseph Forlini and Derek Forlini about not being paid for all his hours worked and overtime.

32. Joseph Forlini and Derek Forlini repeatedly said that they would investigate his complaints, but never got back to Paolo and never paid Paolo the wages Paolo was owed.

33. During the time period, Paolo was generally not paid (a) for all his hours worked; (b) time and one half his regular hourly rate for hours worked over forty in a workweek

("overtime"); and (c) an extra hour of pay for days on which Paolo worked a spread of ten or more hours.

34. During the time period, Paolo was not paid minimum wages and overtime wages and was not paid an extra hour of pay for work performed at least ten hours apart in a day.

35. During the time period, Paolo's job responsibilities did not require any independent judgment, and Paolo did not have the power to hire or fire employees.

36. During the time period, Paolo was not specifically notified by Defendants of the regular pay day designated by Defendant, Defendant's name, address and principal place of business and telephone number and his specific rate of pay as required by the New York Wage Theft Prevention Act. Paolo has not been given any specific notice of this information to sign and has not signed any such notice.

FIRST CLAIM FOR RELIEF
FAIR LABOR STANDARDS ACT

37. Plaintiff repeats and re-alleges each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

38. At all relevant times, Defendants have been and continue to be, employers engaged in interstate commerce and/or the production of goods for commerce, within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

39. At all relevant times, Defendants employed, and/or continue to employ, Plaintiff within the meaning of the FLSA.

40. Upon information and belief, at all relevant times, Defendants have had gross revenues in excess of $500,000.

41. Plaintiff consents in writing to be a party to this action, pursuant to 29 U.S.C. §216(b). The named Plaintiff's written consent is attached hereto and incorporated by reference.

42. At all relevant times, the Defendants had a policy and practice of refusing to pay overtime compensation to its employees for their hours worked in excess of forty hours per workweek as well as minimum wages for all hours worked.

43. As a result of the Defendants' willful failure to compensate Plaintiff, at a rate equal to or greater than the minimum wage rate and at a rate equal to or greater than one and one-half times the regular rate of pay for work performed in excess of forty hours in a workweek, the Defendants have violated and, continue to violate, the FLSA, 29 U.S.C. §§ 201 *et seq.*, including 29 U.S.C. §§ 207(a)(1) and 215(a).

44. As a result of the Defendants' failure to record, report, credit and/or compensate Plaintiff, the Defendants have failed to make, keep and preserve records with respect to Plaintiff sufficient to determine the wages, hours and other conditions and practices of employment in violation of the FLSA, 29 U.S.C. §§ 201, *et seq.*, including 29 U.S.C. §§ 211(c) and 215(a).

45. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

46. Due to the Defendants' FLSA violations, Plaintiff is entitled to recover from the Defendants, his unpaid minimum wages, overtime wages, and an equal additional amount as liquidated damages, additional liquidated damages for unreasonably delayed payment of wages, interest, reasonable attorneys' fees, and costs and disbursements of this action, pursuant to 29 U.S.C. § 216(b).

SECOND CLAIM FOR RELIEF
NEW YORK LABOR LAW

47. Plaintiff repeats and re-alleges each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

48. At all relevant times, Plaintiff was employed by the Defendants within the meaning of the New York Labor Law, §§ 2 and 651.

49. Defendants willfully violated Plaintiff's rights by failing to pay him minimum wages and/or overtime compensation at rates not less than one and one-half times the regular rate of pay for each hour worked in excess of forty hours in a workweek, and/or failing to pay an extra hour of pay for spread of hours pay, in violation of the New York Labor Law and its regulations.

50. The Defendants' New York Labor Law violations have caused Plaintiff irreparable harm for which there is no adequate remedy at law.

51. Defendants willfully violated Plaintiff's rights by failing to provide him proper notices and wage statements in violation of the New York Wage Theft Prevention Act.

52. As a result of Defendants' violation of the New York Wage Theft Prevention Act, Plaintiff is entitled to damages of $50 per day as a result of Defendants' failure to provide the notice required under the New York Wage Theft Prevention Act and $250 per week for Defendants' failure to provide a Wage and Hour Statement to Plaintiff disclosing, inter alia, correct overtime hours worked and rates of pay.

53. Due to the Defendants' New York Labor Law violations, Plaintiff is entitled to recover from Defendants his unpaid wages, unpaid commissions, unpaid minimum wages, unpaid spread of hours wages, unpaid overtime compensation, reasonable attorneys' fees, and/or costs and disbursements of the action, pursuant to New York Labor Law § 663(1).

THIRD CLAIM FOR RELIEF
(New York Labor Law – Breach of Contract)

54. Plaintiff repeats and realleges each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

55. Plaintiff entered into an employment contract with Defendants, which required Defendants to pay Plaintiff his regular and overtime and minimum wages.

56. Plaintiff fully performed all his obligations under the employment contract.

57. Defendants breached the employment contract by failing to pay to Plaintiff wages owed to Plaintiff for services provided by Plaintiff.

58. Defendants' breach has caused Plaintiff to suffer damages.

59. As a result of Defendants' breach of the employment contracts, Plaintiff has been damaged in an amount to be determined at trial.

FOURTH CLAIM FOR RELIEF
(New York Labor Law – UNJUST ENRICHMENT)

60. Plaintiff repeats and realleges each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

61. Defendants have been unjustly enriched at the expense of the Plaintiff by their illegally and improperly receiving the work performed by Plaintiff and failing to pay Plaintiff wages for Plaintiff's work performed.

62. Plaintiff has been damaged by Defendants' intentional refusal to pay him wages for work requested from, received from, and performed by Plaintiff.

FIFTH CLAIM FOR RELIEF
(New York Common Law -- QUANTUM MERUIT)

63. Plaintiff repeats and realleges each and every allegation of the preceding paragraphs with the same force and effect as though fully set forth herein.

64. Plaintiff performed services for Defendants at Defendants' specific request, for which Defendants understood they would have to pay.

65. Despite demand therefore, Plaintiff has not been paid reasonable value for those services.

66. Based on the foregoing, Plaintiff is entitled to recover the reasonable value of the unpaid services provided to the Defendants in an amount to be determined at trial.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

a. A declaratory judgment that the practices complained of herein are unlawful under the FLSA and the New York Labor Law;

b. An injunction against the Defendants and their officers, agents, successors, employees, representatives and any and all persons acting in concert with it, as provided by law, from engaging in each of the unlawful practices, policies and patterns set forth herein;

c. An award of unpaid wages, unpaid minimum wages and unpaid overtime compensation due under the FLSA and the New York Labor Law;

d. An award of spread of hours damages equal to an additional hour of pay for each day on which a plaintiff worked a spread of more than ten hours;

e. An award of statutory damages under the Wage Theft Prevention Act in the amount of $150 per week plus interest;

f. An award of liquidated and/or punitive damages, as a result of the Defendants' willful failure to pay overtime compensation pursuant to 29 U.S.C. § 216 and the New York Labor Law;

g. An award of statutory damages under the New York Wage Theft Prevention Act;

h. An award of prejudgment and postjudgment interest;

i. An award of costs and expenses of this action together with reasonable attorneys' and expert fees; and

j. Such other and further relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all questions of fact raised by the complaint.

Dated: New York, New York
April 23, 2017

LAW OFFICE OF WILLIAM COUDERT RAND

By: ______________________________

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CONSENT TO BECOME PARTY PLAINTIFF

By my signature below, I hereby authorize the filing and prosecution of claims in my name and on my behalf to contest the failure of Forlini's Restaurant Inc., Joseph Forlini and Derek Forlini to pay me overtime wages and/or minimum wages as required under state and/or federal law and also authorize the filing of this consent in the action(s) challenging such conduct. I authorize the representative plaintiffs and designate them class representatives as my agents to make decisions on my behalf concerning the litigation, the method and manner of conducting this litigation, the entering of an agreement with Plaintiffs' counsel concerning attorneys' fees and costs, and all other matters pertaining to this lawsuit.

[signature] PAOLO GRIECO

Signature Date Print Name